



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

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Matthew J. Strickler
Secretary of Natural Resources

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Director

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Regional Director

**STATE AIR POLLUTION CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
TRANSMONTAIGNE OPERATING COMPANY L.P.
FOR
TRANSMONTAIGNE OPERATING COMPANY L.P. – NORFOLK
TERMINAL
Registration No. 60242**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and TransMontaigne Operating Company L.P., regarding the TransMontaigne Operating Company L.P. – Norfolk Terminal, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "CFR" means the Code of Federal Regulations, as incorporated into the Regulations.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the TransMontaigne Operating Company L.P. – Norfolk Terminal located at 7600 Halifax Lane, in Chesapeake, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means an Article 1 Title V operating permit, which TransMontaigne applied for and DEQ issued under Registration No. 60242, issued on April 7, 2014.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
10. "TransMontaigne" means TransMontaigne Operating Company L.P., a limited partnership authorized to do business in Virginia and its affiliates, partners, and subsidiaries. TransMontaigne is a "person" within the meaning of Va. Code § 10.1-1300.
11. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

SECTION C: Findings of Fact and Conclusions of Law

1. TransMontaigne owns and operates the Facility in the City of Chesapeake, Virginia. The Facility is the subject of the Permit, which allows TransMontaigne to operate a bulk petroleum liquids storage and distribution terminal. The Facility consists of 38 above ground storage tanks, two truck loading racks, and one marine vessel loading operation.
2. On May 22, 2018, Department staff conducted a site visit and subsequent file review at the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Regulations, and the Permit. Based on the inspection and follow-up information, DEQ made the following observations:
 - i) The seal gap inspection report dated February 15, 2017 ("February 2017 Report"), for gap measurements conducted on that date on the Tank 13 gasoline storage tank listed the gap between the tank wall and the secondary seal at 92.58 cm² per meter of tank diameter, and the width of gaps at 3.81 cm.

Permit Condition III.A.24, states, “The permittee shall comply with the applicable requirements of 40 CFR 63, Subpart BBBBBB. The requirements of this subpart apply when each applicable storage tank and truck loading rack is in gasoline service, as defined in 40 §CFR 63.11100.”

40 CFR §60.113(b)(4)(ii)(B), states, “the accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 cm² per meter of tank diameter, and the width of any portion of any gap seal shall not exceed 1.27 cm.”

- ii) The Facility did not make necessary repairs or empty the storage vessel from April 2, 2017, through September 21, 2017, 172 days, upon identification on February 15, 2017, of seals not meeting the regulatory requirements.

As required by Permit Condition III.A.24, above, 40 CFR §60.113b(b)(4), states, “Make necessary repairs or empty the storage vessel within 45 days of identification in any inspection for seals not meeting the requirements listed in (b)(4)(i) and (ii) of this action.”

- iii) The February 2017 Report, due to DEQ by March 17, 2017, was not submitted until June 15, 2018, a period of 455 days late.

As required by Permit Condition III.A.24, above, 40 CFR §60.115b(b)(4), states, “After each seal gap measurement that detects gaps exceeding the limitations specified by §60.113b(b)(4), submit a report to the administrator within 30 days of the inspection.”

- iv) The seal gap exceedance reported in the February 2017 Report were not reported in the Facility 40 CFR 63 Subpart BBBBBB semiannual compliance report for January 1 – June 30, 2017, received by DEQ on July 28, 2017.

Permit Condition III.D.53, states, “For Tanks 1-4, 11, 13, 101-105, and 109, and truck loading rack LR-1, the permittee shall comply with the applicable reporting requirements specified in 40 CFR §63.11095.

40 CFR 63.11095(a)(3), states, “(a) Each owner or operator of a bulk terminal or a pipeline breakout station subject to the control requirements of this subpart shall include in a semiannual compliance report to the Administrator [DEQ]... For each occurrence of an equipment leak for which no repair attempt was made within 5 days or for which repair was not completed within 15 days after detection.”

- v) The seal gap exceedance reported in the February 2017 Report was not reported in the Facility Permit January 1 – June 30, 2017, Permit semiannual monitoring report, received by DEQ on July 28, 2017.

Permit Condition IX.104, states, "The permittee shall submit the results of monitoring contained in any applicable requirement to DE no later than March 1 and September 1 of each calendar year. This report must be signed by a responsible official, consistent with 9 VAC 5-80-80 G, and shall include:... (b) All deviations from permit requirements.

- vi) The seal gap exceedance reported in the February 2017 Report were not reported in the 2017 Facility certification of compliance, received by DEQ on January 30, 2018.

Permit Condition IX.105, states, "Exclusive of any reporting required to assure compliance with the terms and conditions of this permit or as part of a schedule of compliance contained in this permit, the permittee shall submit to EPA and DEQ no later than March 1 each calendar year a certification of compliance with all terms and conditions of this permit including emission limitation standards or work practices for the period ending December 31. The compliance certification shall comply with such additional requirements that may be specified pursuant to §114(a)(3) and §504(b) of the federal Clean Air Act."

- vii) According to Facility maintenance records, TransMontaigne did not shut down Tank 13 on February 15, 2017, to minimize emissions upon finding seal gap exceedances. Tank 13 operated for 172 days, until September 21, 2017, when the seal gaps returned to being within the regulatory threshold.

Permit Condition IX.105, states, "At all times, including periods of startup, shutdown, and soot blowing, and malfunction, all owners shall, to the extent practicable, maintain and operate any affected facility associated air pollution control equipment in a manner consistent with air pollution control practices for minimizing emissions."

3. On June 14, 2018, and July 13, 2018, TransMontaigne submitted documentation in response to a request by DEQ for additional information regarding the seal gap exceedances at Tank 13. TransMontaigne stated that the initial seal gap measurements with the noted exceedances occurred on February 15, 2017, and when product was added on September 21, 2017, seal gap measurements that demonstrated compliance with the requirements of the regulations.
4. On September 20, 2018, based on the May 22, 2018, site visit, and subsequent file review, the Department issued a NOV to TransMontaigne for the violations described in paragraphs C(2), above.
5. On October 9, 2018, TransMontaigne provided a written response to the NOV confirming information previously received by DEQ that the seal gaps on Tank 13 were in compliance, and described the steps taken to decrease the likelihood of repeat violations in the future.

6. Based on the results of the May 22, 2018, site visit, and subsequent file review, the Board concludes that TransMontaigne has violated Permit Condition III.A.24, 40 CFR §60.113b(b)(4)(ii)(B), 40 CFR §60.113(b)(4), 40 CFR §60.115b(b)(4), Permit Condition III.D.53, 40 CFR §63.1095(a)(1), Permit Conditions IX 104 and 105, as described in paragraphs C(2), above.
7. TransMontaigne has submitted documentation that verifies that the violations described in paragraphs C(2), above, have been corrected.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders TransMontaigne, and TransMontaigne agrees to pay a civil charge of \$20,119 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

TransMontaigne, shall include its Federal Employer Identification Number (FEIN) 34-2037161 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, TransMontaigne shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of TransMontaigne for good cause shown by TransMontaigne, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV dated January 29, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.

3. For purposes of this Order and subsequent actions with respect to this Order only, TransMontaigne admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. TransMontaigne consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. TransMontaigne declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by TransMontaigne to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. TransMontaigne shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. TransMontaigne shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. TransMontaigne shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

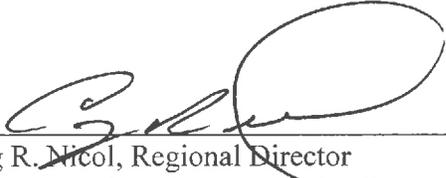
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and TransMontaigne. Nevertheless, TransMontaigne agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after TransMontaigne has completed all of the requirements of the Order;
 - b. TransMontaigne petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to TransMontaigne.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve TransMontaigne from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by TransMontaigne and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of TransMontaigne certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind TransMontaigne to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of TransMontaigne.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, TransMontaigne voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1st day of March, 2019.



Craig R. Nicol, Regional Director
Department of Environmental Quality

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TransMontaigne Operating Company, L.P. voluntarily agrees to the issuance of this Order.

Date: 22 Feb 2019 By: [Signature] VP
(Person) (Title)

TransMontaigne Operating Company, L.P.

State of Colorado
~~Commonwealth of Virginia~~
City/County of Denver

The foregoing document was signed and acknowledged before me this 22nd day of February, 2019, by Dudley Tarlton who is Vice President of TransMontaigne Operating Company, L.P., on behalf of the corporation.

[Signature: Judith K. Kinard]
Notary Public

19954019422
Registration No.

My commission expires: 12/28/2019

Notary seal:

JUDITH K. KINARD
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 19954019422
MY COMMISSION EXPIRES 12/28/2019